

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
DIVISION OF PURCHASES
Agreement to Purchase Services

THIS AGREEMENT, made this 1st day of September, 2009, is by and between the State of Maine, Dept of Administrative and Financial Services, Division of Purchases hereinafter called "Department," and Comdata Network Inc, located at 5301 Maryland Way, Brentwood TN 37027, telephone number 615-370-7000, hereinafter called "Provider", for the period of September 1, 2009 to August 31, 2012.

The AdvantageME Vendor/Customer number of the Provider is VC0000124444

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

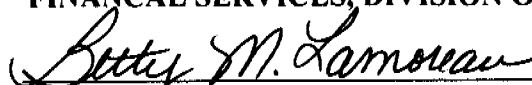
- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C - Exceptions to Rider B
- Rider D, E, and/or F - (At Department's Discretion)
- Rider G - Identification of Country in Which Contracted Work will be Performed

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in 3 original copies.

DEPARTMENT OF ADMINISTRATIVE AND
FINANCIAL SERVICES, DIVISION OF PURCHASES


By:


Betty M Lamoreau, Director

and

COMDATA NETWORK, INC

By:

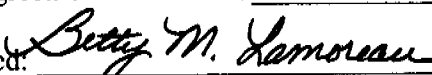

Randy Morgan, Senior Vice President & General Manager

UNENCUMBERED

SEP - 1 2009

NO FUNDS RESERVED
FOR THIS CONTRACT

Total Agreement Amount: \$ _____

Approved:  SEP - 1 2009
Chair, State Purchases Review Committee
BP54 (Rev 9/07)

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

GOVERNMENT FUEL CARD SERVICES

This Government Fuel Services and Sales Agreement ("**Agreement**") is made and entered into the 1st day of July 2009 by and between the **State of Maine, Department of Administrative & Financial Services/Division of Purchases** acting on behalf of ALL State of Maine Departments and Agencies ("**Buyer**"), **Comdata Network Inc.** ("**Seller**"), Buyer and Seller being sometimes referred to collectively as "**Parties**" and individually as "**Party**" to provide Card services as specifically described in this agreement.

1. Definitions.

1.1 When used in the Agreement, the terms listed in the introductory paragraph and below have the following meanings:

"**RFP**" refers to the Request for Proposal #112508 for Fleet Card Services.

"**Account Holder**" refers to an entity maintaining a Card account under this agreement.

"**Card**" means the Master Card fleet fuel credit card issued by Seller for Buyer/Account Holder's use in purchasing Product from Merchants as provided in the Agreement.

"**Extended Term**" has the meaning set forth in Section 4.

"**Initial Term**" has the meaning set forth in Section 4.

"**Merchant**" means any merchant that offers Product for sale that honors the Card, unless Seller has notified Buyer/Account Holder that a certain merchant will not be considered a Merchant for participation under the Agreement.

"**Product**" has the meaning set forth in Section 2.

"**Term**" means the Initial Term and Extended Term, if any.

1.2 Other words defined in the Agreement but not appearing in this section, including those in the preamble to this Agreement, will have the meaning subscribed in the Agreement. The foregoing terms included in Rider B will have the same meaning as described in this Rider A of the Agreement.

2. Fuel Card Services

This Agreement provides Cards to cover a portion of the normal requirements for the State of Maine's retail fueling needs for vehicles and miscellaneous equipment. The Cards will also be used to purchase miscellaneous automotive and mechanical supplies, when necessary, for the operation of vehicles and miscellaneous equipment. Seller is to supply Buyers with Cards for use in purchasing Product from retail vendors. Seller, through use of its ultimate vendor status with the IRS, and it's subcontractor Mansfield Oil,

will provide billing services net of federal and state taxes and discounts. Seller will supply these services as per the terms and conditions of this Agreement and the RFP response proposal dated 12/29/2008. In case of any conflict between the terms of this Agreement and the RFP, the terms of this Agreement will govern.

2.1 The Card has universal acceptance and is accepted at any location that accepts MasterCard. The Card is accepted in all 50 States along with Canada and Mexico.

2.2 The Card can be used to purchase any type of unleaded gasoline, diesel fuel and any alternative fuels including E-85, bio-diesel, CNG, and propane.

2.3 Seller will provide, at no cost to the Buyer/Account Holder, different Card graphics to choose from.

2.4 Buyer/Account Holders will have the ability to set varied purchase controls and limits on the Cards.

2.5 Seller ships all Card orders via Federal Express or UPS with two day delivery being standard. Cards may be delivered to multiple delivery points. If Cards are ordered before 11am Central time, Cards will be delivered within 48 hours. If the Cards are ordered after 11am Central time, then it will take at least 72 hours before the cards arrive. Seller will ship Cards overnight within 24 hours if ordered by 11 a.m. Central time and requested for overnight delivery. There are no costs associated with Card shipments.

3. Taxes.

3.1 Seller invoices to Buyer/Account Holder will be net of federal taxes and applicable state taxes.

3.2 Seller must be registered with the IRS as an ultimate fuel vendor and must provide Buyer with the registration number.

3.3 Buyer must document and confirm to Seller that it is permitted to engage in tax-free transactions with respect to the Product under all federal or state laws that may apply to the Agreement and the Product delivered under the Agreement. Buyer will provide to Seller in a timely manner all necessary exemption certificates and other information and documentation as may be reasonably requested by Seller including the completion of the Certificates in **Exhibit "B"** and must reasonably cooperate with Seller to perfect claims for refunds or credits. Further, Buyer waives any claim it may have with regard to said claims for refunds or credits for taxes to the extent that Seller claims them.

4. Term and Termination.

4.1 Subject to the right of either Party to terminate this Agreement earlier as specifically provided in Section 4.2 and subject to the right of Buyer to terminate the Agreement under Rider B of this Agreement, the initial term of this Agreement will commence on the Effective Date, and will continue for a period of three (3) years from that date ("**Initial Term**"). Upon expiration of the Initial Term, the Agreement will be subject to review for possible extension periods of one (1) year each, but no more than three (3) additional terms, ("**Extended Terms**"), unless either Party notifies the other at least sixty (60) days before the end of the Initial Term or the then-current Extended Term, if any, that it desires to terminate the Agreement effective at the end of the Initial Term or the then current Extended Term, if any.

4.2 Buyer also acknowledges that Seller will provide the Card services necessary to allow the Parties to complete the transactions contemplated by this Agreement. Buyer further acknowledges that Seller will pay federal and state excise taxes associated with the sale of the Product to the Buyer and seek tax credits or refunds therefore that provide the Parties a portion of the economic incentive for entering into this Agreement. If during the Term of this Agreement, the tax rules should change and the taxing agency denies Seller a tax credit or refund, Seller may terminate this Agreement effective immediately.

5. Buyer's/Account Holder Obligations

5.1 Buyer will provide a single contact person or project manager for the Term of this Agreement, to oversee the agreement, and coordinate and manage the supply of Cards and billing processes for miscellaneous using agencies. Initially the Department of Transportation, Department of Public Safety, Central Fleet Management and Natural Resources Service Center will coordinate separate implementation processes for their agencies, manage their own Cards and billing processes under separate accounts as Account Holders. Other agencies may wish to coordinate and manage their own accounts as well, subject to approval by the Director of the Division of Purchases.

5.2 Buyer/Account Holder will coordinate the distribution plan for the Cards and dispose of the Cards when no longer needed.

5.3 Buyer/Account Holder will work with Seller to determine the optimum account setup including proper fueling limits by transaction, by day and by total purchase.

5.4 Buyer/Account Holder will determine the appropriate data capture items at the point-of-sale (i.e., driver ID, unit number).

5.5 Buyer/Account Holder will provide Seller with all necessary data as per the conditions of the RFP.

6. Invoices, Payment, Credit

6.1. Seller will render invoices to Buyer/Account Holder in U.S. dollars on either a bi-monthly or weekly billing cycle. Billing cycle to vary by account and left to the discretion of the Buyer/Account Holder. All billings to be supported by necessary documentation, including an electronic invoice, which details each Card transaction during the billing cycle. Electronic billing data to be formatted as per the terms and condition of the RFP. Seller is to work with Buyer/Account Holder to provide alternate electronic billing data as necessary to facilitate data capture by Buyer. Each Party will furnish to the other Party any other substantiating documents required under the Agreement. Until such documents have been furnished, the other Party may suspend any performance that reasonably depends upon those documents being furnished.

6.2 Buyer/Account Holder will be responsible for credit extended with respect to the Cards issued to or on behalf of Buyer/Account Holder by Seller pursuant to the terms of the Agreement. The total amount shown on each invoice sent to Buyer/Account Holder is due and payable within 15 days or 7 days of date of the invoice depending on the billing cycle and payment schedule selected by the Buyer/Account Holder. This amount includes current transactions, amounts past due, late payment finance charges, charges for returned checks and other applicable charges. Buyer/Account Holder agrees to pay a late payment charge of 1% of the outstanding balance per month on past due balances, or at the maximum amount permitted by applicable law, whichever is less. Seller reserves the right to charge a returned check fee of twenty dollars (\$20) or the maximum amount permitted under applicable law, whichever is less.

6.3 Buyer/Account Holder must pay Seller for invoiced amounts in U.S. dollars, without any adjustments, discounts, or set-offs unless otherwise mutually agreed by Buyer and Seller.

6.4 Buyer/Account Holder's payment will be made by check or electronic transfer. Method of payment to be at Buyer/Account Holder's discretion. Checks to be delivered to Seller at Comdata, PO Box 900, Brentwood, TN 37024.

7. Warranties.

7.1 The Parties acknowledge that Seller will at no time have custody of Product sold pursuant to the Agreement. Unless required by law, Seller is not responsible for any problem Buyer/Account Holder may have with any Product obtained from Merchants pursuant to this Agreement.

7.2 THE SELLER DISCLAIMS ALL WARRANTIES OF ANY NATURE WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO PRODUCT SOLD TO BUYER/ACCOUNT HOLDER PURSUANT TO THE AGREEMENT, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE EVEN IF SUCH PURPOSE IS SPECIFICALLY KNOWN TO SELLER.

7.3 If Buyer/Account Holder has a dispute with a Merchant honoring the Card with regard to the Product, Buyer/Account Holder must pay Seller for the Product and settle the dispute directly with the Merchant. However, Buyer/Account Holder shall have the benefit of MasterCard liability protection to the extent available under the MasterCard rules, subject to change from time to time in MasterCard's sole discretion.

8. Delivery Via Fuel Card.

Seller will issue to Buyer/Account Holder certain Cards that must be used to obtain Product from Merchants. Any Product not obtained by use of a Card will not be subject to the terms of this Agreement. Cards will be issued to Buyer/Account Holder and those employees of Buyer/Account Holder as may be designated by Buyer/Account Holder. Buyer/Account Holder and its employees agree to accept the Cards subject to the terms and conditions set forth herein. Buyer/Account Holder may receive the Product at any Merchant, unless Seller excludes such Merchant under this Agreement. Product will be deemed delivered upon generation of a Card activity report indicating such receipt.

9. Title, Risk of Loss and Cost of Delivery.

Title to and risk of loss for Product delivered under the Agreement will pass to Buyer/Account Holder as Product is delivered from the Merchant fuel pump. Buyer/Account Holder will be invoiced for all Product received from the Merchant.

10. Account and Card Use.

10.1 All Cards issued to Buyer/Account Holder remain the property of the issuing bank and must be returned upon request. Seller, or the issuing bank may cancel, revoke, repossess or restrict the use of Cards at any time upon 30 days prior notice.

10.2 Card transaction capabilities will be restricted by merchant category code ("MCC") as set up by Buyer/Account Holder—Cards will be valid for at least the Initial Term of this Agreement, and will be automatically rolled over during any Extended Term of this Agreement.

10.3 The custody, control and use of all Cards issued pursuant to this Agreement are Buyer/Account Holder's sole responsibility. Buyer/Account Holder is absolutely responsible for its employees and their actions and for their compliance and non-compliance with the terms and conditions of this Agreement with regard to the Cards. Buyer/Account Holder must take all necessary precautions to ensure that the Cards are used only by authorized individual(s). Unless and until Buyer/Account Holder has given Seller notice of a lost or stolen Card (pursuant to the notice provisions in Section 15), all purchases obtained by use of a Card will constitute delivery of such items purchased by Buyer/Account Holder and Buyer/Account Holder is obligated for payment accordingly.

10.4 Cards may not be duplicated. Cards will be deactivated upon termination of this Agreement or notification of a lost or stolen Card.

10.5 Buyer/Account Holder must notify Seller immediately of any loss, theft or unauthorized use of the account or of any Card. Buyer/Account Holder understands that it is liable for unauthorized use of the Cards until Buyer/Account Holder provides notice to Seller. Notice to Seller will be as follows: immediate verbal notice to telephone number: 1-800-226-3896 or cancellation of the Cards through the iConnectData website.

11. Customer Service.

11.1 Seller will provide a customer service representative available at a toll free number for emergencies related to Buyer/Account Holder's use of the Cards, including lost, stolen, or mutilated cards. This toll free number will be available 24 hours per day, 365 days a year at no additional charge to Buyer/Account Holder.

11.2 Seller will provide telephone numbers and titles of the customer service representatives responsible for handling Buyer/Account Holder inquiries concerning billing or other non-emergency issues. Seller will provide an organizational chart highlighting the key people, including location of offices, telephone number and email addresses who will be assigned by Seller to perform services under this Agreement. Seller will provide updated lists if personnel changes.

11.3 Upon the request of the Buyer/Account Holder, Seller will setup personnel authorized by Buyer with access to Seller's Smart Buy system and F-Stop reporting capabilities for use in identifying best fuel pricing locations.

11.4 Seller, together with its subcontractor Mansfield Oil, will invoice the buyer net of state and federal taxes for any transaction, regardless of level, which it can identify as a fuel transaction. All other transactions will be handled on a pass through cost basis. Buyer may cancel contract upon thirty (30) days prior notice if transaction data falls below 90% of all fuel transactions for any billing cycle.

12. Government Regulations.

Buyer/Account Holder will comply with all applicable rules and regulations regarding the receipt and use of Product delivered pursuant to the Agreement, including, without limitation, those laws pertaining to Reformulated Gasoline and Conventional Gasoline compliance and documentation.

13. Audit.

During the Term of the Agreement, and for such subsequent period after termination or expiration of the Agreement as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies ("MAAP") rules, upon reasonable prior notice, each Party may audit, at their expense, the other Party's records and documents relating to Product delivered or received under the Agreement during normal business hours of that Party at its place of business. Upon request, Buyer will provide Seller a copy of the aforesaid MAAP rules. Each Party will retain the said records for a period of seven years.

14. Force Majeure.

If either Party is rendered unable, wholly or in part, to perform or if delayed in performing its obligations under the Agreement (other than to make payments as due) due to acts of God, floods, fires, explosions or storm; loss of transportation beyond the Party's control; strikes, lockouts or other industrial disturbances; wars or any law, rule, order or action of any court or instrumentality of the federal or any state government; exhaustion, reduction or unavailability of Products at the source of supply from which deliveries can reasonably be made, or the exhaustion or unavailability or delay in delivery of any material or product necessary in the manufacture of the Products deliverable, delay in servicing a transaction request, delay due to equipment failure or transmission failure, or any other cause or causes beyond its control whether similar or dissimilar to those stated above, on such Party's giving notice and full particulars of such force majeure the other Party or Parties, as applicable, then the obligations of the Party giving such notice as applicable, will be suspended from the date of receipt of such notice and for the continuance of any inability so caused. Such force majeure must, so far as possible, be remedied with all reasonable dispatch, except for strikes or labor disputes, which may be remedied in the sole discretion of the Party effected, as applicable. The sole purpose of this Section is to excuse the performance of either Party, as applicable, during a force majeure event.

15. Notice.

Unless otherwise set forth in the Agreement, notices required under the Agreement must be in writing and (i) mailed via certified, return receipt requested United States Mail, (ii) sent via confirmed private overnight courier system, or (iii) sent via confirmed facsimile transmission to the address or facsimile number listed

below, or such other address or number that a Party should designate by notice under this provision, and will be deemed delivered to the Party to which it is addressed upon receipt:

To Seller/Comdata:

Comdata Network Inc.
5301 Maryland Way
Brentwood, TN 37027
Attn: Randy Morgan, SVP and
General Manager
Facsimile No: 615-376-6960

To Buyer: CONTRACT ADMINISTRATOR

Division of Purchases
Burton Cross Building 4th Floor
111 Sewall Street
9 State House Station
Augusta, ME 04333-0009

Attn: Terry DeMerchant, Procurement Manager.
Tel: 207-624-7334 Fax: 207-624-5086
e-mail: Terry.L.DeMerchant@maine.gov

Account Holders
Account Holder Address
(to be provided as accounts are set up)

16. Safety.

Buyer/Account Holder is aware of known hazards or risks in and assumes all risk and responsibility for receiving, handling and using (in any manner whatsoever) the Product. Buyer/Account Holder will comply with all safety and health related governmental requirements with respect to the handling or use of the Product and will take such steps as are reasonable and practicable to inform its employees, agents, contractors and customers of any hazards or risks associated with the use and handling of the Product, if appropriate.

17. Assigns, Assignment, and Third Parties.

This Agreement shall be binding upon and shall inure to the benefit of the approved successors and assigns of each Party. Each Party covenants that it will not by operation of law or otherwise assign this Agreement, or any part of or right or obligation under it, without the prior written consent of the other Party, as applicable, in each instance. Any attempt by a Party to assign this Agreement will be null and void. The consent by a Party to any assignment of this Agreement will not constitute a waiver of such Party's right to withhold its consent to any other or further assignment of the Agreement. The absolute and unconditional prohibitions contained in this Section and each Party's agreement to them are material inducements to the other Party to enter into this Agreement and any breach of them will constitute a material default under this Agreement permitting the non-breaching Party, as applicable, to exercise all remedies provided for in this Agreement or by law. Nothing contained in the Agreement will be construed as creating any rights or benefits in or to any third party.

18. Governing Law.

The Agreement and any disputes arising under it will be governed by the laws of the State of Maine, except the choice of law rules of that state that may require the laws of another jurisdiction to apply. Any legal proceeding against the Buyer/Account Holder regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Providers consent to personal jurisdiction in the State of Maine.

19. Miscellaneous.

The waiver by either Party of the breach of any provision of this Agreement or of any other agreement between them by the other Party, as applicable, will not be deemed to be (i) a waiver of the breach of any other provision of this Agreement or any other agreement, or (ii) of any subsequent or continuing breach of such provision or provisions. Each provision of this Agreement and of any agreement between the Parties, as applicable, or any sub-part of them, will be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion of them will not affect the validity or enforceability of any other provision. The section headings are for convenience only and may not be interpreted in any way to limit or change the provisions of this Agreement. Neither Party, as applicable, may claim any amendment, modification or waiver of, or release from any provision by mutual agreement unless such agreement is in writing, signed by both Parties and specifically states that it is an amendment, modification or waiver of, or release from the Agreement.

20. Compliance with Laws.

Seller and Buyer agree to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. Except as specifically provided otherwise in this Agreement, the enactment of any state or federal statute or the promulgation of regulations under such statute after execution of this Agreement will be reviewed by Buyer and Seller to determine whether the provisions of the Agreement require formal modification.

21. Fuel Pricing

This contract has a no fee program based on the products and services stated in Seller's proposal and are good for the term of the contract.

This contract is based on retail pricing minus both federal and state taxes and includes previously negotiated Discounts from Irving Oil Company and Consortium Discounts from Irving Oil Company, Getty/Luckoil Company and Drake Oil Company as long as such Discounts remain in effect. Seller will actively pursue other marketers for discounts on behalf of the State of Maine.

Aviation and Marine Fuel – Seller will strip both federal and state taxes if provided with appropriate data by the applicable merchant. Seller will work with MasterCard and aviation and marine fuel merchants to have such data provided to Seller, however, the decision will be in the discretion of each merchant.

Seller will issue monthly rebates to each Buyer/Account Holder in accordance with the basis points schedule listed below, based on Buyer/Holder's selected billing and payment cycle and the Buyer's actual usage. The basis point rebate will be adjusted in accordance with the appropriate basis point schedule in the event Buyer's actual usage changes. Basis points will be on the check statement.

The below is on payment terms of 15/15

Aggregate Monthly Gallons	Basis Points (Rebate Percentage)
1 - 100,000	75 basis points (0.75%)
100,000 - 200,000	80 basis points (0.80%)
200,000 - 300,000	85 basis points (0.85%)
300,000 - 400,000	90 basis points (0.90%)

Monthly Spend	Basis Points on Total Spend
1 - 100,000	20 basis points (0.20%)
100,000 - 200,000	25 basis points (0.25%)
200,000 - 300,000	30 basis points (0.30%)
300,000 - 400,000	45 basis points (0.45%)

The below is on payment terms of 15/7

Aggregate Monthly Gallons	Basis Points (Rebate Percentage)
1 - 100,000	85 basis points (0.85%)
100,000 - 200,000	90 basis points (0.90%)
200,000 - 300,000	95 basis points (0.95%)
300,000 - 400,000	100 basis points (1.00%)

Monthly Spend	Basis Points on Total Spend
1 - 100,000	25 basis points (0.25%)
100,000 - 200,000	30 basis points (0.30%)
200,000 - 300,000	44 basis points (0.44%)
300,000 - 400,000	60 basis points (0.60%)

The below is on payment terms of 7/7

Aggregate Monthly Gallons	Basis Points (Rebate Percentage)
1 - 100,000	85 basis points (0.85%)
100,000 - 200,000	90 basis points (0.90%)
200,000 - 300,000	95 basis points (0.95%)
300,000 - 400,000	100 basis points (1.00%)

Monthly Spend	Basis Points on Total Spend
1 - 100,000	25 basis points (0.25%)
100,000 - 200,000	50 basis points (0.50%)
200,000 - 300,000	65 basis points (0.65%)
300,000 - 400,000	80 basis points (0.80%)

22. Replacement cards for MDOT

All MDOT replacement cards because of expiration date must be sent directly to Bill Allen and not to the card holder.

23. Municipalities

Opportunities for Political Subdivisions and School Districts:

The Division of Purchases is committed to providing purchasing opportunities for political subdivisions and school districts in Maine by allowing them access, through our vendors, to our contract pricing. The successful bidder's willingness to extend contract pricing to these entities will be considered in making this award.

Will you accept requests for cards from political subdivisions and school districts in Maine at the prices quoted?

 X Yes, unconditionally.

 Yes, with conditions.

 No.

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ _____

2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

State agencies will be able to choose their own payment schedules i.e. 15/15, 15/7 or 7/7 as specified in Seller's proposal. Please see section 6 **Invoices, Payment, Credit** and Section 21 **Fuel Pricing**.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Terry DeMerchant
Title: Procurement Manager
Address: Div of Purchases, 9 State House Station, Augusta ME 04333-0009

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (M AAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This

indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are deappropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.